

By: Rodriguez of Travis

H.B. No. 3148

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of construction contractors; providing an administrative penalty; requiring an occupational registration; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 8, Occupations Code, is amended by adding Chapter 1306 to read as follows:

CHAPTER 1306. CONSTRUCTION CONTRACTORS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1306.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission of Licensing and Regulation.

(2) "Construction" means work related to the erection, improvement, alteration, repair, renovation, maintenance, or remodeling of a building, structure, appurtenance, road, highway, bridge, dam, levee, canal, jetty, or other improvement to or on real property, including moving, demolishing, dredging, shoring, drilling, blasting, and excavating real property.

(3) "Construction contractor" means a person who:

(A) contracts to perform construction for compensation; and

(B) employs one or more employees to perform the construction.

(4) "Controlling person" means an individual who:

1           (A) is an owner, officer, or director of a  
2 construction contractor; or

3           (B) possesses direct or indirect control of 25  
4 percent or more of a construction contractor.

5           (5) "Department" means the Texas Department of  
6 Licensing and Regulation.

7           (6) "Employee" has the meaning assigned by Section  
8 61.001, Labor Code.

9           (7) "Executive director" means the executive director  
10 of the department.

11           (8) "Independent contractor" means a person who  
12 contracts to perform construction for compensation and who  
13 ordinarily:

14           (A) acts as the employer of any employee of the  
15 person by paying wages, directing activities, and performing other  
16 similar functions characteristic of an employer-employee  
17 relationship;

18           (B) is free to determine the manner in which the  
19 construction is performed, including the hours of labor of or  
20 method of payment to any employee;

21           (C) is required to furnish or to have employees,  
22 if any, furnish necessary tools, supplies, or materials to perform  
23 the construction; and

24           (D) possesses the skills required for the  
25 specific type of construction.

26           Sec. 1306.002. EXEMPTIONS. (a) This chapter does not apply  
27 to:

1           (1) the manufacture, distribution, or sale of a  
2 product, material, or merchandise; or

3           (2) landscaping services that:

4           (A) consist only of the maintenance or removal of  
5 existing plants, shrubs, trees, or other vegetation; or

6           (B) are not provided in connection with other  
7 construction work that the person performing the landscaping  
8 services has also contracted to perform.

9           (b) A construction contractor who holds a license,  
10 certificate, or registration under Title 6 or this title is not  
11 required to register under this chapter to the extent the  
12 construction services performed by the contractor do not violate  
13 the applicable chapter under which the contractor is licensed,  
14 certified, or registered.

15           SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT AND COMMISSION

16           Sec. 1306.051. GENERAL POWERS AND DUTIES. The department,  
17 executive director, or commission, as appropriate, may take action  
18 as necessary to administer and enforce this chapter.

19           Sec. 1306.052. RULES. The commission shall adopt rules as  
20 necessary to administer this chapter.

21           Sec. 1306.053. CONSTRUCTION CONTRACTOR DATABASE. The  
22 department shall make available on its Internet website a publicly  
23 accessible list of construction contractors who are or have been  
24 registered under this chapter. For each construction contractor,  
25 the list must contain:

26           (1) a statement indicating whether the contractor is  
27 registered in good standing; and

1           (2) information regarding whether the contractor's  
2 registration has ever been suspended or revoked.

3           Sec. 1306.054. ANNUAL REPORT. (a) The department shall  
4 submit a report to the legislature not later than September 30 of  
5 each year regarding the registration and regulation of construction  
6 contractors under this chapter. The report must include the  
7 following information for the preceding fiscal year:

8           (1) the number of:

9                   (A) individuals misclassified as independent  
10 contractors by construction contractors;

11                   (B) construction contractors assessed  
12 administrative penalties;

13                   (C) construction contractors who are not  
14 registered under this chapter, if required to register;

15                   (D) registrations suspended or revoked under  
16 this chapter; and

17                   (E) new registrations issued under this chapter;

18           (2) the total amount of administrative penalties  
19 assessed;

20           (3) the total amount of administrative penalties  
21 collected;

22           (4) the name of each construction contractor whose  
23 registration was suspended or revoked; and

24           (5) any additional information the commission  
25 considers necessary.

26           (b) On request by the department, the Texas Workforce  
27 Commission shall provide information to the department or otherwise

1 assist the department in preparing the report.

2 SUBCHAPTER C. REGISTRATION REQUIREMENTS

3 Sec. 1306.101. REGISTRATION REQUIRED. A person may not act  
4 as or offer to act as a construction contractor unless the person is  
5 registered under this chapter.

6 Sec. 1306.102. APPLICATION; APPLICATION FEE. (a) An  
7 applicant for registration must:

8 (1) apply to the department on a form prescribed by the  
9 executive director and under rules adopted by the commission; and

10 (2) submit with the application a nonrefundable  
11 application fee in an amount set by the commission.

12 (b) The commission by rule shall specify the information  
13 that must be included on an application submitted to the  
14 department. The rules must require that an application include the  
15 following information for an applicant, including each controlling  
16 person of an applicant:

17 (1) full legal name;

18 (2) business address and telephone number;

19 (3) tax identification number;

20 (4) number of employees of the applicant, if any; and

21 (5) if applicable:

22 (A) federal employer identification number;

23 (B) employer identification number issued to the  
24 applicant by the Texas Workforce Commission for purposes of  
25 unemployment compensation; and

26 (C) evidence that the applicant has obtained  
27 workers' compensation insurance.

1       Sec. 1306.103. TERM OF REGISTRATION. A registration under  
2 this chapter is valid for one year.

3       Sec. 1306.104. CHANGE IN INFORMATION. A registration  
4 holder shall notify the department in the manner prescribed by the  
5 department not later than the 15th day after the date of any change  
6 that occurs in the information submitted in the application.

7       Sec. 1306.105. CONFIDENTIALITY. (a) Except as provided by  
8 Subsection (b) and Section 1306.053, information submitted to the  
9 department in an application under Section 1306.102 is confidential  
10 and not subject to disclosure under Chapter 552, Government Code.

11       (b) The department shall release to the Texas Workforce  
12 Commission information regarding an applicant for or holder of a  
13 registration, including information regarding disciplinary action  
14 taken against a registration holder.

15       SUBCHAPTER D. PENALTIES AND OTHER ENFORCEMENT PROVISIONS

16       Sec. 1306.151. NOTICE TO DEPARTMENT. The Texas Workforce  
17 Commission shall notify the department if the Texas Workforce  
18 Commission has knowledge that a person required to register under  
19 this chapter is not registered or is otherwise violating this  
20 chapter.

21       Sec. 1306.152. GROUNDS FOR LICENSE DENIAL AND DISCIPLINARY  
22 ACTION. (a) The commission or executive director may refuse to  
23 issue or renew a registration, revoke or suspend a registration,  
24 place on probation a person whose registration has been suspended,  
25 or reprimand a registration holder who violates this chapter, a  
26 rule adopted under this chapter, or an order of the commission or  
27 executive director.

1       (b) The commission or executive director shall suspend a  
2 registration for not less than six months if the registration  
3 holder has been:

4           (1) assessed a penalty under Section 214.008, Labor  
5 Code; or

6           (2) convicted of an offense under:

7                   (A) Section 61.019, Labor Code; or

8                   (B) Section 31.04, Penal Code, if the offense  
9 involved the theft of a service that was rendered by an employee of  
10 the registration holder.

11       (c) The commission or executive director shall revoke a  
12 registration if the registration holder is:

13           (1) assessed a penalty under Section 214.008, Labor  
14 Code, before the fifth anniversary of the date of a prior penalty  
15 assessed under that section; or

16           (2) convicted of an offense described by Subsection  
17 (b)(2) before the fifth anniversary of the date of a prior  
18 conviction for an offense described by that subsection.

19       Sec. 1306.153. ELIGIBILITY OF PERSON WHOSE REGISTRATION  
20 HAS BEEN REVOKED. A person whose registration has been revoked by  
21 order of the commission or executive director is not eligible to  
22 submit a new application for registration until the first  
23 anniversary of the date of the revocation.

24       Sec. 1306.154. PROHIBITED ACTS. A construction contractor  
25 may not:

26           (1) require an individual through coercion,  
27 misrepresentation, or fraudulent means to:

1                   (A) perform services as an independent  
2 contractor; or

3                   (B) form a business entity;

4                   (2) knowingly misclassify an employee as an  
5 independent contractor; or

6                   (3) knowingly contract with or pay a person for  
7 construction services if the person is required to register under  
8 this chapter and is not registered.

9           Sec. 1306.155. ADMINISTRATIVE PENALTY. The commission or  
10 executive director may impose an administrative penalty on a person  
11 under Subchapter F, Chapter 51, if the person is required to  
12 register under this chapter and fails to register on or before the  
13 30th day after the date of receiving notice from the department that  
14 the person is required to register. The amount of the  
15 administrative penalty may not exceed \$1,000.

16           SECTION 2. Not later than December 1, 2015, the Texas  
17 Commission of Licensing and Regulation, the Texas Department of  
18 Licensing and Regulation, and the executive director of the Texas  
19 Department of Licensing and Regulation, as appropriate, shall adopt  
20 rules and forms necessary to implement Chapter 1306, Occupations  
21 Code, as added by this Act.

22           SECTION 3. (a) Except as provided by Subsection (b) of this  
23 section, this Act takes effect September 1, 2015.

24           (b) Section 1306.101, Occupations Code, and Subchapter D,  
25 Chapter 1306, Occupations Code, as added by this Act, take effect  
26 January 1, 2016.